RECORD, CASE No. 13,650.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 428.

THE LEHIGH VALLEY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED SEPTEMBER 24, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 9, 1891.

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1 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Lehigh Valley Railroad Company, plaintiff in error, and The Commonwealth of Pennsylvania, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of

2 a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the twenty-third day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court U. States.

August 23d, 1889.

[Endorsed:] Filed in supreme court, middle district, Aug. 27, 1889.
1—428

3 The United States of America to the Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the office of the prothonotary of the supreme court of Pennsylvania for the middle district, wherein The Lehigh Valley Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this 23rd day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of the U. S.

[Endorsed:] Filed in supreme court, middle district, Aug. 30, 1889.

4 On this thirtieth day of August, in the year of our Lord one thousand eight hundred and eighty-nine, personally appeared A. C. Stamm before me, the subscriber, deputy prothonotary of the supreme court of Pennsylvania for the middle district of said court, and makes oath that he delivered a true copy of the within citation to John F. Sanderson, deputy attorney general, upon the twenty-ninth day of August, A. D. 1889.

A. C. STAMM.

Sworn to and subscribed the day and year aforesaid.
WILLIAM PEARSON,
Per JOHN HARNER,
Deputy Prothonotary.

5 (*Docket Entry of Court of Common Pleas.*)

Among the records and proceedings enrolled in the court of common pleas in and for the county of Dauphin, in the Commonwealth of Pennsylvania, to No. 524, June term, 1887, is contained the following copy of appearance docket entry:

COMMONWEALTH OF PENNA. *vs.* LEHIGH VALLEY RAILROAD CO.	}	524. Appeal from the Settlement of the Auditor General & State Treasurer.

Kirkpatrick, Olmsted.

June 8, 1887, appeal and specifications of objection filed.
June 10, 1887, bond filed.
Sept. 9, 1887, *narr.* and copy of account filed.
December 19, 1887, special term I. L.

January 11, 1888, affidavit of William C. Alderson filed.

Dec. 3, 1888, opinion filed, deciding that there is due the Commonwealth by the defendant the sum of three thousand one hundred thirty-seven and $\frac{38}{100}$ dollars, $3,137.38, and costs.

December 18, 1888, plaintiff's receipt filed.

January 11, 1889, defendant's exceptions filed. Same day, exceptions overruled and judgment in accordance with opinion filed.

January 28, 1889, writ of error No. 23, May term, 1889, from the supreme court received and filed.

Certified.

[Seal of the Court of Common Pleas of Dauphin County.]

W. H. ULRICH,
Prothonotary.

6 *Appeal.*

In the matter of the account for tax on gross receipts, amounting to $25,066.03, settled against the Lehigh Valley Railroad Company by the auditor general of Pennsylvania and approved by the State treasurer, a copy of which account is hereto attached.

The said Lehigh Valley Railroad Company hereby appeals from said settlement to the court of common pleas of Dauphin county, and files the following specifications of objection thereto, agreeably to the provisions of the act of ass-mbly in such case made and provided:

1. The main line of the Lehigh Valley Railroad Company extends from Wilkes Barre, in the State of Pennsylvania, to Perth Amboy, in — State of New Jersey. The company also owns numerous branch roads, some of which are in Pennsylvania and some in New Jersey. Under agreement with other railroad companies it runs its own trains from Wilkes Barre to the city of New York, and also from Wilkes Barre to the city of Buffalo, in the State of New York, and its principal business consists of the transportation of freight and passengers to or from other States out of, into, or through the State of Pennsylvania. A large proportion of the receipts taxed in the settlement hereby appealed from was derived from freight and passengers carried by continuous transportation from points in Pennsylvania to points in other States or from points in other States to points in Pennsylvania or from points in other States to points in other States passing through the State of Pennsylvania. The taxation of freight or passengers transported by continuous lines of transportation to or from other States out of, into, or through the State of Pennsylvania or of the receipts for such transportation to or from other States out of, into, or through the State of Pennsylvania is in violation of that clause of section 8 of article I of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes; and the act of June 7, 1879, under which said tax is claimed, or any other act of

assembly, if it shall be found to warrant the imposition of the said tax, is therefore unconstitutional and void.

LEHIGH VALLEY RAILROAD COMPANY,

(Signed) By its attorney, M. E. OLMSTED.

Harrisburg, Pa.

7 *Account.*

Lehigh Valley Railroad Company in account with the Commonwealth of Pennsylvania, Dr.

For tax on gross receipts, per act of June 7th, 1879, for six months ending June 30, 1886, as per reports herewith filed:

Gross receipts	$3,925,552 14	
Proportion taxable in Penna., $\frac{260.62}{326.61}$	3,133,254 31	
Tax at rate of eight-tenths of one per cent.		$25,066 03
Due Commonwealth		$25,066 03

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *Sept.* 9, 1886.

Settled and entered.

(Signed) JEROME B. NILES,
Auditor General.

TREASURY DEPARTMENT OF PA,
HARRISBURG, *Sept.* 15, 1886.

Approved.

(Signed) W. LIVSEY,
For M. S. QUAY,
State Treasurer.

Endorsement: No 524. June term, 1887. Commonwealth of Pennsylvania *vs.* Lehigh Valley Railroad Company. Appeal from the settlement of an account by the auditor general and State treasurer. Filed in the auditor general's office the 31st day of May, 1887. John A. Glenn, for A. Wilson Norris, auditor general. Filed in the prothonotaric's office the 8th day of June, 1887. W. H. Ulrich, prothonotary. M. E. Olmsted, attorney for defendant.

8 *Bond.*

Know all men by these presents that we, The Lehigh Valley Railroad Company and Charles Hartshorne, of the city of Philadelphia and State of Pennsylvania, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of fifty thousand one hundred-thirty-two & $\frac{6}{100}$ dollars ($50,132.06), lawful money of the United States of America, to be paid to the said Commonwealth of Pennsylvania or her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves and each

of us, our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and the corporate seal of said company and dated the seventh day of June, A. D. 1887.

Whereas the above-bounden Lehigh Valley Railroad Company has entered in the office of the auditor general of Pennsylvania an appeal to the court of common pleas of Dauphin county from the settlement of an account for tax on gross receipts, amounting to twenty-five thousand sixty-six and $\frac{3}{100}$ dollars ($25,066.03), made by the auditor general on the 9th of Sept., 1886, and approved by the State treasurer on the 15th of Sept., 1886:

Now, the condition of this obligation is such that if the said Lehigh Valley Railroad Company shall prosecute its said appeal with effect and pay all costs or charges which the court or arbitrators having jurisdiction to hear and determine said appeal shall award, and also pay any sum of money which shall appear by the judgment of the court or award of arbitrators to be due upon said account to the Commonwealth of Pennsylvania, then this obligation to be void and of none effect, or otherwise to be and remain in full force and virtue.

LEHIGH VALLEY RAILROAD COMPANY,
By CHAS. HARTSHORNE, *Vice-President.*

Attest:

[Seal of Lehigh Valley R. R. Co.]

JNO. R. FANSHAWE, *Secretary.*
CHAS. HARTSHORNE. [SEAL.]

Signed, sealed, and delivered in presence of—
D. G. BAIRD.
WM. UHLER.

The security of the above bond is approved.
JAMES GAY GORDEN.

(Must be signed by a judge of some court in county where sureties reside.)

9 Endorsement: No. 524. June term, 1887. Commonwealth of Pennsylvania *vs.* Lehigh Valley Railroad Company. Bond on appeal from the settlement of an account by the auditor general and State treasurer. And now, to wit, June 10th, 1887, the security of the within bond is approved. J. W. Simonton, P. J. Filed June 10th, 1887. M. E. Olmsted, attorney for defendant.

10 *Narr.*

In Dauphin Common Pleas, No. 524, June Term, 1887.

DAUPHIN COUNTY, *ss:*

The Commonwealth of Pennsylvania, by her attorney general, complains of the Lehigh Valley Railroad Company of a plea that

they render unto the said Commonwealth the sum of one hundred thousand dollars, lawful money of the United States, which they owe to and unjustly detain from her, for that whereas the said defendants, on the fifteenth day of September, A. D. 1886, at the county of Dauphin aforesaid, were indebted to the said plaintiff in the sum of twenty-five thousand and sixty-six $\frac{3}{100}$ dollars, lawful money of the United States, on an account examined, adjusted, settled, and signed by the auditor general and State treasurer of this Commonwealth and duly entered in the books of their office, as authorized and required by law, on the day and year last aforesaid, in which a certain sum of money, to wit, the sum last aforesaid, is due and owing the said plaintiff from the said defendants, with interest thereon, at the rate of twelve per centum per annum, from and after the expiration of sixty days from the day upon which the said account was so as aforesaid examined, adjusted, settled, and signed by the auditor general and State treasurer of this Commonwealth, for tax on gross receipts, per act of June 7th, 1879, for six months ending June 30th, 1886, which said account was, on the fifteenth day of September, A. D. 1886, submitted to, revised, and approved by the State treasurer and a copy thereof thereafter sent by the said auditor general, under his hand and seal of office, to the said defendants, and which yet remains in full force against the said defendants and appealed from, whereby, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from the said defendants a certain sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account so as aforesaid examined, adjusted, settled, and signed by the auditor general and State treasurer of this Commonwealth, parcel of the said sum above demanded, with interest and other legal charges; and, being so indebted, the said defendants afterwards, to wit, on the day and year aforesaid, at the county aforesaid, promised to pay to the said plaintiff, on request, the said last-mentioned sum of money;

And whereas, also, the said defendants, on the day and year in the first count first mentioned, at the county aforesaid, were indebted to the said plaintiff in a certain further sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account in the first count mentioned, for money then and there had and received by the said defendants to and for the
11 use of the said plaintiff; and also a certain further sum of money, to wit, the sum last aforesaid, on an account settled and entered by the auditor general and State treasurer of this Commonwealth against the said defendants on the day and year in the first count mentioned for tax on gross receipts, and approved by the State treasurer on the day and year in the first count mentioned;

And whereas afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, the said defendants, in consideration of the premises, promised to pay the two last-mentioned several sums of money respectively to the said plaintiff on request; yet the said defendants have disregarded their said promises, and, although often requested so to do, have not as yet paid any of the said several sums

of money or any part thereof, to the damage of the said plaintiff of one hundred thousand dollars, and therefore she brings suit, &c.

JNO. F. SANDERSON,
Deputy Attorney General.

Lehigh Valley Railroad Company in account with the Commonwealth of Pennsylvania, Dr.

For tax on gross receipts, per act of June 7th, 1879, for six months ending June 30, 1886, as per reports herewith filed:

Gross receipts		$3,925,552 14
Proportion taxable in Penna., $\frac{260.69}{326.61}$		3,133,254 31
Tax at rate of eight-tenths of one per cent.		$25,066 03
Due Commonwealth		$25,066 03

☞(This account bears interest at rate of 12 per centum per annum from sixty days after date of State treasurer's approval. Return this with check in payment of amount due to State treasurer. Give post-office address of company.)

12 AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *Sept.* 9, 1886.

Settled and entered.

JEROME B. NILES,
Auditor General.

TREASURY DEPARTMENT OF PA.,
HARRISBURG, *Sept.* 15, 1886.

Approved.

W. LIVSEY,
For M. S. QUAY,
State Treasurer.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *July* 21, 1887.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and seal of office the day and year aforesaid.

[SEAL.] JNO. A. GLENN,
For A. WILSON NORRIS,
Auditor General.

Endorsement: No. 524. June term, 1887. Commonwealth of Pennsylvania *vs.* Lehigh Valley Railroad Company. *Narr.* and copy of account. Filed Sept. 9, 1887. W. S. Kirkpatrick, attorney general.

13 *Affidavit of Wm. C. Alderson.*

COMMONWEALTH OF PENNSYLVANIA *vs.* LEHIGH VALLEY RAILROAD COMPANY. } No. 524. June Term, 1887. In the Court of Common Pleas of Dauphin County.

STATE OF PENNSYLVANIA, *City of Philadelphia,* } *ss:*

On this 10th day of November, 1887, before me, a notary public in and for said State, residing in said city, personally appeared Wm. C. Alderson, who, being by me duly affirmed according to law, did depose and say as follows:

I am the treasurer of The Lehigh Valley Railroad Company, the defendant in the above-entitled suit, and as such treasurer made to the auditor general of Pennsylvania for the six months ending June 80, 1886, the report of gross receipts upon which the account for taxes was settled by the auditor general.

The main line of railroad operated by the Lehigh Valley Railroad Company extends from Perth Amboy, in the State of New Jersey, to Wilkes Barre, in the State of Pennsylvania, with numerous branches in Pennsylvania and New Jersey. The company has also running arrangements with other companies whereby it runs its own trains, both passenger and freight, in a through line from Jersey City, New Jersey, to Buffalo, New York.

A very large portion of its business consists of the transportation of freight, passengers, &c., from points in Pennsylvania to points in other States, or from points in other States to points in Pennsylvania, or from points in other States to points in other States, passing through the State of Pennsylvania, about one-half of its entire receipts being derived from the transportation of anthracite coal from Pennsylvania into other States.

The following detailed statement shows the several classes of transportation from which the receipts returned to and taxed by the auditor general were derived:

Coal.

Receipts from transportation of coal from points in Pennsylvania to other points in Pennsylvania without passing out of the State	$493,115 94
Receipts from transportation of coal by continuous carriage from points in Pennsylvania to other points in Pennsylvania, but over lines partly in other States—that is to say, passing out of Pennsylvania into other States and back again in course of transportation	113,921 17
Receipts from transportation of coal by continuous carriage from points in Pennsylvania to points in other States	1,994,629 01
Total receipts from transportation of coal	$2,601,666 12

14 *Freight Other Than Coal.*

Receipts from transportation from points in Pennsylvania to other points in Pennsylvania without passing out of the State	$317,452 96
Receipts from continuous transportation from points in Pennsylvania to other points in Pennsylvania, but passing over lines partly in other States—that is to say, passing out of Pennsylvania into other States and back again into Pennsylvania in course of transportation	8,513 11
Receipts from transportation by continuous carriage from points in a foreign State to other points in the same State, passing through the State of Pennsylvania	30,172 32
Receipts from transportation by continuous carriage from points in other States to points in Pennsylvania	172,749 93
Receipts from transportation by continuous carriage from points in Pennsylvania to points in other States	157,003 53
Receipts from transportation by continuous carriage from points in a foreign State, passing through Pennsylvania, to points in a third State	203,156 36
Receipts from transportation by continuous carriage from points in foreign States to other points in foreign States not touching the State of Pennsylvania,	19,156 65
Total	$908,204 86

Passengers, Express, and Mail.

Receipts from transportation from points in Pennsylvania to other points in Pennsylvania without passing out of the State	$274,212 50
Receipts from continuous transportation from points in Pennsylvania to other points in Pennsylvania, but passing out of Pennsylvania into other States and back again into Pennsylvania in course of transportation	398 77
Receipts from transportation by continuous carriage from points in a foreign State to other points in the same State, passing through the State of Pennsylvania	9,427 12
Receipts from transportation by continuous carriage from points in other States to points in Pennsylvania	54,554 57
Receipts from transportation by continuous carriage from points in Pennsylvania to points in other States	51,715 33

Receipts from transportation by continuous carriage from points in a foreign State, passing through Pennsylvania, to points in a third State	1,502 70
Receipts from transportation from points in a foreign State to other points in a foreign State not touching Pennsylvania	23,870 17
Total	$415,681 16

Summary.

1. Total receipts from transportation from points in Pennsylvania to other points in Pennsylvania without passing out of the State	$1,084,781 40
2. Total receipts from transportation by continuous carriage from points in Pennsylvania to other points in Pennsylvania, but over lines partly in other States—that is to say, passing out of Pennsylvania into other States and back again into Pennsylvania in course of transportation	122,833 05
3. Total receipts from transportation by continuous carriage from points in a foreign State to other points in the same State, passing through the State of Pennsylvania	39,599 44
4. Total receipts from transportation by continuous carriage from points in other States to points in Pennsylvania	227,304 50
5. Total receipts from transportation by continuous carriage from points in Pennsylvania to points in other States	2,203,347 87
6. Total receipts from transportation by continuous carriage from points in a foreign State, passing through Pennsylvania and ending in a third State	204,659 06
7. Total receipts from transportation from points in foreign States to other points in foreign States not touching Pennsylvania	43,026 82
Total receipts	$3,925,552 14

(Signed) WM. C. ALDERSON, *Treasurer.*

Affirmed and subscribed before me the day and year aforesaid.

J. HENRY WILLIAMS,
Notary Public.

[SEAL.]

Endorsement: No. 524. June term, 1887. Commonwealth of Pennsylvania *vs.* Lehigh Valley Railroad Company. Affidavit of Wm. C. Alderson, treasurer. Filed Jan. 11th, 1888. Olmsted.

16 COMMONWEALTH OF PENNSYLVANIA *vs.* LEHIGH VALLEY RAILROAD COMPANY. } No. 524. June Term, 1887. In the Court of Common Pleas of Dauphin County.

STATE OF PENNSYLVANIA, *City of Philadelphia,* } *ss:*

On this 23d day of January, A. D. 1888, before me, a notary public in and for said State, residing in said city, personally appeared WILLIAM C. ALDERSON, who, being by me duly sworn according to law, did depose and say as follows:

I am the treasurer of the Lehigh Valley Railroad Company, the defendant above named, and on the tenth day of November, 1887, made a sworn statement for use in the said case. Wherever in the said statement of November tenth, 1887, I used the term "continuous transportation" or "continuous carriage," the freight or passengers from the transportation of which the receipts were derived were carried between the points mentioned for a single sum or charge and upon a single way-bill or ticket, and were, when taken upon the cars of this company, destined to be carried and were actually carried from point to point, as in said statement set forth.

The Lehigh Valley Railroad Company has no railroad of its own reaching the city of Philadelphia, but transports coal and other merchandise and sometimes passengers from Mauch Chunk and other points in Pennsylvania over its own line to Phillipsburg, in the State of New Jersey, from which point it is carried upon the Belvidere and Delaware railroad to Trenton and thence by the Pennsylvania railroad lines to the city of Philadelphia. So far as the Lehigh Valley railroad line is concerned, the transportation is from Mauch Chunk or the other points in Pennsylvania to Phillipsburg, in New Jersey, but by arrangements between this
17 company and the corporations owning the other roads, the transportation is continuous from Mauch Chunk and the other points in Pennsylvania to Philadelphia.

The receipts mentioned in my statement of November tenth, in the second paragraph in each instance, under the respective heads of "coal," "freight other than coal," and "passengers, express, and mail," and also in the second item of the summary, were derived in the manner above explained.

Some of the trains, and in many instances the same cars, which carried the freight and passengers indicated between points in Pennsylvania and the city of Philadelphia carried also freight and passengers destined and carried from points in Pennsylvania to points in New Jersey and New York, and *vice versa.*

The various items of receipts shown in my statement of November tenth and classified in the third paragraph of the summary as "receipts from transportation by continuous carriage from points in a foreign State to other points in the same State, passing through the State of Pennsylvania," were derived from transportation of

freight and passengers billed or ticketed from the city of New York to other points in the State of New York, and *vice versa*.

The same trains and the same cars which carried the said freight and passengers carried also freight and passengers destined and carried from points in Pennsylvania to points in other States and from points in other States to points in Pennsylvania.

(Signed) WM. C. ALDERSON, *Treasurer*.

Sworn and subscribed before me the day and year aforesaid.

[SEAL.] J. HENRY WILLIAMS,
Notary Public.

Endorsement: No. 524. June term, 1887. Commonwealth of Pennsylvania *vs.* Lehigh Valley Railroad Company. Affidavit of W. C. Alderson. Filed Dec. 3, 1888.

Report of Gross Receipts.

18 To the auditor general of Pennsylvania:

In accordance with the requirements of the seventh section of an act entitled "An act to provide revenue by taxation," approved June 7, 1879, as treasurer of the Lehigh Valley Railroad Company I make the following report of the gross receipts of said company for the six months ending June 30, 1886.

(Signed) WM. C. ALDERSON, *Treasurer*.

OFFICE OF THE LEHIGH VALLEY RAILROAD COMPANY,
228 SOUTH THIRD STREET,
PHILADELPHIA, *August 9th*, 1886.

Gross receipts derived from all sources during the above period as follows:

For tolls and transportation	
For telegraph business	
For telephone business	
For express business	
For transportation of coal mined, purchased, or sold	
Total gross receipts	$3,925,552 14
Total miles of line	326.61
Total miles of line in Pennsylvania	260.69

STATE OF PENNSYLVANIA, }
City of Philadelphia, } *ss*:

On this 9th day of August, A. D. 1886, personally appeared before me, a notary public in and for the said city aforesaid, Wm. C. Alderson, treasurer of the Lehigh Valley Railroad Company, who, being duly affirmed according to law, did depose and say that the foregoing report is true and correct, and that the company has accounted for and returns herewith gross receipts for transportation of coal mined,

purchased, or sold at the same rates as are charged for the transportation of similar freight for other companies or individuals.

(Signed) WM. C. ALDERSON, *Treasurer.*

Sworn and subscribed before me the day and year aforesaid.

JOHN F. LEWIS,
Notary Public.

Endorsement: Copy. 524. June term, 1887. Gross receipts. Report of the Lehigh Valley Railroad Company for the six months ending June 30, 1886. Filed in the auditor general's office on the 30th day of Aug., 1886.

19 Lehigh Valley Railroad Co. in account with the Commonwealth of Pennsylvania, Dr.

For tax on gross receipts per act of June 7th, 1879, for six months ending Dec. 31, 1887, as per report herewith filed.

Gross receipts	$4,726,083 87	
Proportion taxable in Penna., $\frac{371.07}{330.98}$	3,801,710 94	
Tax at rate of eight-tenths of one per cent.		$30,413 66
Due Commonwealth		$30,413 66

☞ (This account bears interest at rate of 12 per centum per annum from sixty days after date of State treasurer's approval. Return this with check in payment of amount due to State treasurer. Give post-office address of company.)

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *Apr.* 4, 1888.

Settled and entered.
(Signed) JOHN A. GLENN,
For A. WILSON NORRIS,
Auditor General.

TREASURY DEPARTMENT OF PA.,
HARRISBURG, *Apr.* 17, 1888.

Approved.
(Signed) W. LIVSEY,
State Treasurer.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *April 19th*, 1888.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and the seal of office the day and year aforesaid.

(Signed) JNO. A. GLENN,
[SEAL.] For A. WILSON NORRIS,
Auditor General.

Endorsement: Copy. No. 576. June term, 1888. Commonwealth of Pennsylvania *vs.* Lehigh Valley Railroad Co. Account.

20 *Findings of Fact and Opinion of Court of Common Pleas.*

COMMONWEALTH OF PENNSYLVANIA *vs.* LEHIGH VALLEY RAILROAD COMPANY.	In Dauphin Common Pleas, No. 524, June Term, 1887. Appeal from Accounting Officers.

By the COURT:

This case was tried without a jury, under the act of 1874. We find the facts to be as follows:

1. The defendant is a railroad company doing business in this Commonwealth. Its own railway is partly within and partly without the State of Pennsylvania, and it connects also with other lines in other States.

2. For the six months ending June 30, 1886, its gross receipts for transportation were $3,925,552.14. Of this amount $1,084,781.40 was received for transportation beginning and ending in Pennsylvania without passing out of the State in course of transit; $122,833.05 was received for transportation by continuous carriage of freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of State and in again in course of transit. So far as the defendant is concerned, the transportation was from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, and the receipts named were for that particular transportation; but the freight and passengers were there delivered upon the railroad of another company, to wit, the Belvidere, Delaware, Railroad Co., a line operated by the Pennsylvania Railroad Company, upon which railroad it was carried to Trenton, and thence by other lines of the Pennsylvania Railroad Company's system to Philadelphia. By running arrangements between these companies the transportation was continuous, and the freight and passengers were, when their transportation commenced at Mauch Chunk, destined for Philadelphia and were actually there delivered. The transportation of passengers was upon tickets, a form of which is hereby referred to, hereto annexed, and marked Exhibit A. The transportation of freight was upon the joint way-bill of the Lehigh Valley and Pennsylvania Railroad Companies, and this way-bill covered the whole transportation. A form is annexed, referred to, and marked Exhibit B. The total receipts from this transportation, seven per cent. of which were collected by the Lehigh Valley Railroad Company at point of shipment and the remainder by the Pennsylvania Railroad Company at point of destination, were apportioned between the companies upon a mileage basis—that is to say, each company's share was in the proportion that the number of miles carried by it bore to the total number of miles carried. One-twentieth of the said receipts were derived from passenger transportation; $43,026.82 was received for transportation from points in foreign States to other points in foreign States not touching Pennsylvania; $39,599.44 was received for transportation from points in a foreign State to other points in the same State passing through the State of

Exhibit - A.

ISSUED BY LEHIGH VALLEY R.R.

PENNSYLVANIA R. R. (Bel.-Del. Div.)

— TO —

PHILLIPSBURG

— TO —

PHILADELPHIA.

Belvidere		
Frenchtown		
Lambertville		
Manunka Ch.		
Milford		
Martins C'k		
Philadelphia		
Riegelsville		
Trenton		
355	FIRST CLASS THIS CHECK NOT GOOD IF DETACHED.	Via L.V. P.

ISSUED BY LEHIGH VALLEY R.R.

Mauch Chunk

— TO —

Phillipsburg.

Belvidere		
Frenchtown		
Lambertville		
Manunka Ch.		
Milford		
Martins C'k		
Philadelphia		
Riegelsville		
Trenton		
355	FIRST CLASS THIS CHECK NOT GOOD IF DETACHED.	Via L.V. P.

The Lehigh Valley Rail Road Co. vs. The Commonwealth of Pennsylvania.

No. 121. & 22.

TO AGENTS.

This Ticket can be issued to points named on each coupon in small type. Fill in destination on blank space with ink and cross off the same on each **Coupon** and **Stub.** If issued to a point on Pennsylvania R. R. (Bel.-Del Div.) not named on this ticket, write **Destination** in blank spaces on right of each coupon and on face of stub.

Agents are requested to write or stamp the name of their station on first or lower coupon as soon as possible after tickets are received, in order to save time in issuing ticket.

STUBS TO BE RETAINED BY AGENTS.

Rate, $.....

Belvidere
Frenchtown
Lambertville
Manunka Ch.
Milford
Martins C'k
Philadelphia
Riegelsville
Trenton

No. Form 355.

ISSUED BY LEHIGH VALLEY RAIL ROAD.

Good for ONE FIRST CLASS Passage.

To Penna. R. R. (Bel.-Del. Div.) Local.

☞ The Checks belonging to this Ticket are only valid for passage when properly dated and when attached to this Contract, and are to be detached by Conductors only.

☞ This Company assumes no responsibility for the safety or transportation of Passengers or Baggage beyond its own line. One hundred pounds of baggage free, but in no case exceeding $100 in value, except by special agreement.

E. B. Byington,

General Passenger Agent.

Pennsylvania in course of transit; $227,304.50 was received for transportation from points in other States to points in Pennsylvania; $2,203,347.87 was received for transportation from points in Pennsylvania to points in other States, and $204,659.06 was received for transportation from points in a foreign State to points in a third State passing through the State of Pennsylvania in course of transit.

In the last four classes and the second class the transportation
21 was continuous from the point of beginning to the point of ending, and the freight and passengers were carried for a single sum or charge and upon a single way-bill or ticket.

3. This settlement taxes $\frac{2}{5}\frac{6}{2}\frac{0}{6}\frac{6}{6}\frac{2}{1}$ of the entire sum of $3,925,552.14 (that fraction representing defendant's mileage within the State) for the six months ending June 30, 1886, and is made under section 7 of the act of 1879. (P. L., 116.)

4. On the fourteenth of August, 1888, the defendant paid to the Commonwealth the sum of $7,500.

Conclusions of Law.

The questions raised here have been discussed in Com. *vs.* Delaware and Hudson Canal Company, 21 W. N. C., 406; and Com. *vs.* New York, Lake Erie & Western Railroad Company, 21 W. N. C., 410. For reasons there given we hold that the Commonwealth can recover tax only upon the sums of $1,084,781.40 and $122,833.05.

The sum due the Commonwealth is as follows:

Tax $\frac{8}{10}$ of one per cent. upon $1,207,614.45	$9,660 92
Upon which there has been paid the sum of	7,500 00
Leaving a balance of	$2,160 92
Interest from November 15, 1886, to October 10, 1888	493 41
Attorney general's commission	483 05
Total	$3,137 38

For which amount we direct judgment to be entered if exceptions are not filed according to law.

(Signed) J. W. SIMONTON, *P. J.*

Endorsement: No. 524. June term, 1887. Commonwealth of Pennsylvania *vs.* Lehigh Valley Railroad Company. Finding of facts and opinion. Filed Dec. 3, 1888.

(Here follows diagram marked p. 22.)

EXHIBIT B.

(F. O. form 281) B. 5M—9-8-'88.

Joint Coal Way-Bill.

Scale: Packerton.

Lehigh Valley & Pennsylvania R. R.

Notice to Agents.

The agent at station where this bill is consigned will examine it carefully, and if any error should appear in weight, rate, extension of freight, or the No. or numbers and kind of cars, or if any cars are missing, he will at once report to auditor of coal freights, Mauch Chunk, Pa., for correction or investigation.

Rules and Regulations Adopted by the L. V. R. R. Co.

First. All claims for lost coal must be made by the shipper. This company will in no case settle such claims with consignee.

Second. Coal will not be allowed for if lost from being loaded in broken or defective cars or in cars with the doors not shut close. After a shipment of coal has been way-billed at Packerton and the consignment ordered to be changed the rate charged shall be an addition of fifteen cents per ton to the regular rate for each time it is so changed, and shall be collected of the party who receives the coal, except in case of through coal, when the charge will be collected of the consignor.

MAUCH CHUNK, PA., ——, 188–.

L. V. No. —.

From —— region mines to ——.

No. —.

Shipper's manifest.	Kind of cars.	No. of cars.	Car numbers. Cars are rated as follows: A, 2 cars; B, 3 cars; C, 3 cars; D, 4 cars.	Consignor.	Consignee.	Destination.	Weight. Tons. Cwt. Total.	Rate.	Freight.

24 *Receipts.*

ATTORNEY GENERAL'S OFFICE.

In the Court of Common Pleas of Dauphin County, June Term, 1887.

COMMONWEALTH
vs.
LEHIGH VALLEY RAILROAD CO. } No. 524.

Received, December 18, 1888, of defendant the sum of one thousand eight hundred eighty-one dollars nineteen cents ($1,881.19) on account of above-stated judgment, to wit:

Tax	$1,178 25
Interest	269 03
Attorney general's commission	433 91
	$1,881 19

Leaving a balance in dispute as follows:

Tax	$982 66
Interest	224 40
Attorney general's commission	49 13
Total	$1,256 19

JNO. F. SANDERSON,
Deputy Attorney General.

Endorsement: No. 524. June T., 1887. Commonwealth *vs.* Lehigh Valley Railroad Company. Receipt. Filed Dec. 18, 1888.

(Duplicate.)

TREASURY DEPARTMENT OF PENNSYLVANIA,
HARRISBURG, *Aug.* 13, 1888.

Received from Lehigh Valley Railroad Company seventy-five hundred dollars on account, to wit:

Tax on gross receipts, $7,500, being tax on receipts from transportation wholly within the State of Pennsylvania for the six months ending June 30, 1887; paid under protest.

W. LIVESY,
For W. B. HART,
State Treasurer.

Registered and countersigned.

JAMES H. McALLISTER,
For THOMAS McCAMANT,
Auditor General.

Endorsement. 524. June T., 1887. Commonwealth of Pennsylvania *vs.* Lehigh Valley Railroad Co. State treasurer's receipt for $7,500.

25 COMMONWEALTH OF PENNSYLVANIA *vs.* LEHIGH VALLEY RAILROAD COMPANY. | No. 524. June Term, 1887. In the Court of Common Pleas of Dauphin County.

Defendant's Exceptions to Decision of the Court.

This case having been tried without jury under the act of April 22, 1874 (P. L., 109), defendant files the following exceptions to the decision of the court:

1. The court erred in including in the judgment directed to be entered in favor of the Commonwealth a tax upon the item of $122,833.05, being the receipts of the Lehigh Valley Railroad Company for transportation of freight and passengers from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, said freight and passengers having been carried by the Pennsylvania Railroad Company from Phillipsburgh, through the State of New Jersey, by way of Trenton, to Philadelphia, as stated in finding of fact No. 2, the taxation of receipts so derived being in violation of that clause of the Constitution of the United States which declares that Congress shall have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

2. The court erred in deciding, relative to the item of $122,833.05, receipts of the Lehigh Valley Railroad Company for the transportation from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, of freight and passengers carried by the Pennsylvania Railroad Company from Phillipsburgh, through the State of New Jersey, by way of Trenton, to Philadelphia, that "in principle the case before us does not seem to be within the mischief which the commercial clause of the Federal Constitution was intended to prevent. In reality and substance the commerce here is purely internal, whatever the mere form of it may be."

3. Having found as a fact that concerning the item of $122,833.05—

"So far as the defendant is concerned the transportation was from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, and the receipts named were for that particular transportation. But the freight and passengers were there delivered upon the railroad of another company, to wit, the Belvidere, Delaware, Railroad Co., a line operated by the Pennsylvania Railroad Company, upon which railroad it was carried to Trenton, and thence by other lines of the Pennsylvania Railroad Company's system to Philadelphia. By running arrangements between these companies the transportation was continuous, and the freight and passengers were, when their transportation commenced at Mauch Chunk, destined for Philadelphia, and were actually there delivered. The transportation of passengers was upon tickets, a form of which is hereby referred to,

hereto annexed, and marked Exhibit A. The transportation of freight was upon the joint way-bill of the Lehigh Valley and Pennsylvania Railroad Companies, and this way-bill covered the whole transportation. A form is annexed, referred to, and marked Exhibit B. The total receipts from this transportation, seven per cent. of which were collected by the Lehigh Valley Railroad Company at point of shipment and the remainder by the Pennsylvania Railroad Company at point of destination, were apportioned between the companies upon a mileage basis—that is to say, each company's share was in the proportion that the number of miles carried by it bore to the total number of miles carried. One-twentieth of the said receipts were derived from passenger transportation "—

26 the court erred in not deciding that the transportation by the Lehigh Valley Railroad Company, *for* which the said receipts were derived, was interstate transportation, and that the taxation of the receipts for such transportation was in violation of that clause of the Constitution of the United States which declares that Congress shall have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

4. The court erred in directing judgment to be entered in favor of the Commonwealth for $3,137.38.

(Signed) M. E. OLMSTED,
Attorney for Defendant.

Harrisburg, Pa., December 17th, 1888.

Order of Court Overruling Exceptions.

And now, to wit, December 17, 1888, the above exceptions are overruled and judgment directed to be entered in accordance with the opinion heretofore filed.

(Signed) J. W. SIMONTON,
President Judge.

To this ruling defendant, by its counsel, excepts, and, at its request, exception sealed.

(Signed) J. W. SIMONTON, *P. J.* [SEAL.]

Endorsement: 524. June term, 1887. Commonwealth of Pennsylvania *vs.* Lehigh Valley Railroad Company. Defendant's exceptions and order of court overruling the same. Filed Jan. 11, 1889.

27 (*Supreme Court Docket Entries.*)

In the Supreme Court of Pennsylvania in and for the Middle District of said Court.

At a supreme court of the State of Pennsylvania sitting in and for the middle district of said court, at the city of Harrisburg, Pennsylvania, on the 21st Monday following the 1st Monday of January, A. D. 1889—present, Hon. Edward M. Paxson, chief

justice, and Hon. James P. Sterrett, Henry Green, Silas M. Clark, Henry W. Williams, J. Brewster M'Collum, and James T. Mitchell, justices, and William Pearson, prothonotary, of the said supreme court of Pennsylvania in and for the said middle district—to May term, 1889, No. 23, it is contained as follows, to wit:

Writ of error to the court of common pleas of Dauphin county.

No. 524. June Term, 1888.

LEHIGH VALLEY RAILROAD COMPANY, Defendant Below,
vs.
COMMONWEALTH OF PENNSYLVANIA, Plaintiff Below. } 23.

M. E. Olmsted.

Jan. 28, 1889.—Precipe, aff., and recog. filed; *eo die*, exit writ of error, returnable *sec. reg.*

April 30th, 1889.—Assignments of error filed.

June 3d, 1889.—Record returned and filed.

June 4th, 1889.—Argued.

June 28th, 1889.—Judgment affirmed *per curiam.*

Aug. 27th, 1889.—Writ of error from the Supreme Court of the United States received and filed.

Aug. 30th, 1889.—Petition for allocatur of said writ by said court; allocatur of said writ by Hon. Joseph P. Bradley, jus-
28 tice of said court; citation from said justice; affidavit of service thereof on deputy attorney general of Pennsylvania and writ of error bond in the sum of $2,500 received and filed.

Sept. 18th, 1889.—Transcript of record certified to Supreme Court of the United States.

Certified from the record.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON,
Prothonotary of Supreme Court of Pennsylvania.

Writ of Error from Supreme Court of Pennsylvania.

29 (Præcipe.)

In the Supreme Court of Pennsylvania for the Middle District.

LEHIGH VALLEY RAILROAD CO., Defendant Below, Plaintiff in Error,
vs.
COMMONWEALTH OF PENNSYLVANIA, Plaintiff Below, Defendant in Error.

Issue writ of error to the court of common pleas of Dauphin county to remove the record and proceedings in a certain appeal

depending therein to No. 524 of June term, 1887, returnable to May term, 1889.

M. E. OLMSTED,
Attorney for Plaintiff in Error.

To Wm. Pearson, prothonotary supreme court of Pa., middle district.

(*Affidavit.*)

DAUPHIN COUNTY, *ss:*

M. E. Olmsted, attorney for the above-named plaintiff in error, being duly sworn according to law, deposes and says that the writ of error in this case is not intended for delay.

M. E. OLMSTED.

Sworn and subscribed before me this 28th day of January, 1889.

WILLIAM PEARSON,
Prothonotary.

30 MIDDLE DISTRICT OF PENNSYLVANIA, *sct:*

[Seal of the Supreme Court of Pennsylvania, Middle District.]

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, Greeting:

Because in the record and process and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court, by our writ, between The Lehigh Valley Railroad Company, plaintiff in error, and The Commonwealth of Pennsylvania, to No. 524, Jan. term, 1888, defendant in error, as it is said, manifest error hath intervened, to the great damage of the said plaintiff in error, as by complaint of the same plaintiff in error we have received information, we, willing that if any error be therein it should be corrected and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process and all things touching the same, under your seals, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, at a supreme court to be held at Harrisburg, in and for the middle district of said Commonwealth, on the 21st Monday foll. 1st Mon. of Jan. next, being 1st Mon. of the term, and this writ, that, the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Honorable Ed. M. Paxson, doctor of laws, chief justice of our supreme court, at Harrisburg, the 28th day of Jan., in the year of our Lord one thousand eight hundred and eighty-nine, and of the Commonwealth the one hundred and thirteenth.

WILLIAM PEARSON,
Prothonotary.

31 Endorsement: No. 23. May term, 1889. Supreme court, middle district. Lehigh Valley Railroad Company, plaintiff in error, *vs.* Commonwealth of Penna., defendant in error. Writ of error to the court of common pleas for the county of Dauphin. (No. 524. June term, 1887.) Returnable the 21st Mon. foll. 1st Mon. of Jan., 1889. Rule on the defendant in error to appear and plead on the return day of the writ. N. B.—10 days' notice to the parties or counsel below is necessary to compel an appearance. Filed in supreme court June 3, 1889. Filed Jan'y 28, 1889.

32 The record and process and all things touching the same, so full and entire as before us they remain, to the honorable the judges of the supreme court of the Commonwealth — Pennsylvania, sitting in and for the middle district, we certify and send as within we are commanded.

J. W. SIMONTON, *P. J.* [SEAL.]

33 Endorsement: No. 23. May term, 1889. Supreme court of Penna., middle district. Lehigh Valley Railroad Co., plaintiff in error, *vs.* Com. of Penna., defendant in error. Dauphin county. Praecipe and affidavit for writ of error. Filed in supreme court Jan. 28, 1889. Middle district. M. E. Olmsted, attorney for plaintiff in error.

Assignments of Error.

The learned court erred in overruling the first exception filed by defendant, which was as follows:

"The court erred in including in the judgment directed to be entered in favor of the Commonwealth a tax upon the item of $122,833.05, being the receipts of the Lehigh Valley Railroad Company for transportation of freight and passengers from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, said freight and passengers having been carried by the Pennsylvania Railroad Company from Phillipsburgh, through the State of New Jersey, by way of Trenton, to Philadelphia, as stated in finding of fact No. 2, the taxation of receipts so derived being in violation of that clause of the Constitution of the United States which declares that
34 Congress shall have power 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

2. The learned court erred in overruling the second exception filed by defendant, which was as follows:

"The court erred in deciding, relative to the item of $122,833.05, receipts of the Lehigh Valley Railroad Company for the transportation from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, of freight and passengers carried by the Pennsylvania Railroad Company from Phillipsburgh, through the State of New Jersey, by way of Trenton, to Philadelphia, that 'in principle the case before us does not seem to be within the mischief which the commercial clause of the Federal Constitution was intended to prevent. In

reality and substance the commerce here is purely internal, whatever the mere form of it may be,'"

3. The learned court erred in overruling the third exception filed by defendant, which was as follows:

"Having found as a fact that concerning the item of $122,833.05—'So far as the defendant is concerned, the transportation was from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, and the receipts named were for that particular transportation; but the freight and passengers were there delivered upon the railroad of another company, to wit, the Belvidere, Delaware, Railroad Co., a line operated by the Pennsylvania Railroad Company, upon which railroad it was carried to Trenton, and thence by other lines of the Pennsylvania Railroad Company's system to Philadelphia. By running arrangements between these companies the transportation was continuous, and the freight and passengers were, when their transportation commenced at Mauch Chunk, destined for Philadelphia, and were actually there delivered. The transportation of passengers was upon tickets, a form of which is hereby referred to, hereto annexed, and marked Exhibit A. The transportation of freight was upon the joint way-bill of the Lehigh Valley and Pennsylvania Railroad Companies, and this way-bill covered the whole transportation. A form is annexed, referred to, and marked Exhibit B. The total receipts from this transportation, seven per cent. of which were collected by the Lehigh Valley Railroad Company at point of shipment and the remainder by the Pennsylvania Railroad Company at point of destination, were apportioned between the companies upon a mileage basis—that is to say, each company's share was in the proportion that the number of miles carried by it bore to the number of miles carried. One-twentieth of the said receipts were derived from passenger transportation'—

The court erred in not deciding that the transportation by the Lehigh Valley Railroad Company from which the said receipts were derived was interstate transportation, and that the taxation of the receipts for such transportation was in violation of that clause of the Constitution of the United States which declares that Congress shall have power 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

4. The learned court erred in directing judgment to be entered in favor of the Commonwealth for $3,137.38.

(Signed) M. E. OLMSTED,
Attorney for Plaintiff in Error.

Harrisburg, Pa., April 29, 1889.

35 Endorsement: 23. May term, 1889. Lehigh Valley Railroad Company, plaintiff in error, defendant below, *vs.* Commonwealth of Pennsylvania, defendant in error, plaintiff below. Assignments of error. Filed Apr. 30, 1889. Olmsted.

Opinion of Supreme Court of Pennsylvania.

LEHIGH VALLEY RAILROAD COMPANY vs. COMMONWEALTH OF PENNSYLVANIA. } M. D. Nos. 23 & 24. May T., 1889. Error to C. P. of Dauphin.

Per Curiam:

There is no essential difference in the facts of these two cases. They present the single question whether transportation from one point to another point in the same State is interstate commerce for the reason that in the course of such transportation the property in question passes the boundaries of the State. The same point was before us last year in a proceeding between the same parties, and we determined it in favor of the Commonwealth. We adhere to the same ruling now, which will enable the case- to be reviewed by the Supreme Court of the United States and our decision corrected if erroneous.

The judgment in each case is affirmed.

Endorsement.

36 *Remittitur.*

MIDDLE DISTRICT OF PENNSYLVANIA, *sct:*

[Seal of the Supreme Court of Pennsylvania, Middle District.]

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, Greeting:

Whereas, by virtue of our writ of error from our supreme court of Pennsylvania in and for the middle district, returnable in the said court on the 21 Monday foll. 1st Mon. of Jan., in the year of our Lord one thousand eight hundred and eighty-nine, a record was brought into the same court of a judgment rendered against The Lehigh Valley Railroad Company, plaintiff in error, at the suit of The Commonwealth of Pennsylvania, defendant in error, and it was so proceeded in our supreme court that the said judgment was affirmed and the record and proceedings thereupon and all things concerning the same were (agreeably to the directions of the act of assembly in such cases made and provided) ordered by the said supreme court to be remitted to the court of common pleas for the county of Dauphin aforesaid, as well for execution or otherwise as to justice shall appertain: Wherefore we remit you the record of the judgment aforesaid and the proceedings thereupon in order for execution or otherwise as aforesaid.

Witness the Hon. Edward M. Paxson, chief justice of our supreme court, at Harrisburg, the 3rd day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

WILLIAM PEARSON,
Prothonotary,
By HOWARD L. CALDER.

37 *Petition for Writ.*

To the Honorable Joseph P. Bradley, justice of the Supreme Court of the United States:

The petition of the Lehigh Valley Railroad Company respectfully showeth—

That your petitioner is a corporation created by and existing under the laws of the State of Pennsylvania, having its principal office and place of business in the city of Philadelphia, in said State.

That its own railway is partly within and partly without the State of Pennsylvania, and that it has running arrangements with other lines in other States.

That by the seventh section of the act of the General Assembly of Pennsylvania approved June 7, 1879 (P. L., 112), a tax of eight-tenths of one per centum is imposed upon the gross receipts of railroad companies "for tolls and transportation, telegraph business, or express business."

That the auditor general and State treasurer of Pennsylvania settled an account against your petitioner for tax on gross receipts claimed to be due under the said seventh section of the act of 1879 for the six months ending June 30, 1886.

That agreeably to law your petitioner appealed from the action of the auditor general and State treasurer to the court of common pleas of Dauphin county, to No. 524, June term, 1887, claiming in its appeal that the said tax was in violation of that clause of section 8 of article I of the Constitution of the United States which provides that "Congress shall have power * * * to regulate
38 commerce with foreign nations and among the several States," &c.

That by agreement of the parties the said cause was heard by the court without the intervention of a jury, the court finding both the law and the facts agreeably to the provisions of an act of the General Assembly of Pennsylvania approved April 22, 1874 (P. L., 109).

That the said court in its finding of facts correctly declared that the total gross receipts of your petitioner for transportation during the period embraced in the suit were $3,925,552.14, of which $1,084,781.40 was received for transportation beginning and ending in Pennsylvania without passing out of the State in course of transit and $122,833.05 for transportation of freight and passengers which were carried by your petitioner from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, and there delivered upon the Belvidere, Delaware, railroad operated by the Pennsylvania Railroad Company, upon which railroad the said freight and passengers were carried to Trenton, and thence by other lines of the Pennsylvania Railroad Company's system to Philadelphia, the transportation being continuous and upon the joint way-bill or ticket of the Lehigh Valley and Pennsylvania Railroad Companies, each company's share of receipts from such transportation being in the proportion

that the number of miles carried by it bore to the total number of miles carried, the balance of said $3,925,552.14 having been derived from the transportation of freight and passengers between points in Pennsylvania and points in other States or between points in
39 other States passing through Pennsylvania to points in other States.

That the said court, sustaining in part the appeal of your petitioner, declared the tax unconstitutional so far as applied to receipts derived from transportation between points in Pennsylvania and points in other States or between points in other States passing through Pennsylvania to points in other States, but sustained the tax as to the items of $1,084,781.40 and $122,832.05 above mentioned.

That your petitioner, admitting its liability to taxation upon the larger of said items derived from transportation beginning and ending in Pennsylvania without passing out of the State in course of transit, has paid the tax thereon into the State treasury, but did, within the proper time, file an exception to the ruling of the court in regard to the said item of $122,833.05 receipts derived from transportation by your petitioner from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, of freight and passengers destined for and by continuous transportation over connecting roads passing through the State of New Jersey, delivered at Philadelphia, Pennsylvania, and in said exception did again allege that the taxation of receipts so derived was in violation of the commercial clause of the Federal Constitution.

That the said court did, December 17, 1888, overrule the said exceptions of your petitioner and direct judgment to be entered in accordance with its opinion theretofore filed, embracing tax upon the said item of $122,833.05.

That thereupon your petitioner by writ of error carried
40 the said cause to the supreme court of Pennsylvania, to No. 23, May term, 1889, in the middle district thereof, assigning as error the overruling by the court of common pleas of Dauphin county of the exceptions filed by your petitioner as aforesaid and the entry by the said court of judgment embracing tax upon the said item of $122,833.05.

That the supreme court of Pennsylvania upon the twenty-eighth day of June, A. D. 1889, affirmed the judgment of the court of common pleas of Dauphin county.

That the supreme court of Pennsylvania, in which said cause was heard and decided, is the highest court of record and the court of last resort in the Commonwealth of Pennsylvania.

That the judgment of said court is final.

That the judgment of the said court, as already shown, necessarily involved the decision of a Federal question, and that said decision is in favor of the State law and against the immunity claimed by your petitioner under the Constitution of the United States.

Wherefore your petitioner (presenting herewith a bond, with security, for approval) prays that a writ of error may be allowed to issue to the said supreme court of Pennsylvania to bring up the

record to the Supreme Court of the United States for correction in that which violates the Constitution and laws thereof, and that the citation to the defendant may accompany the same; and it will ever pray, &c.

LEHIGH VALLEY RAILROAD COMPANY,

By its attorney, —— ——.

[Endorsed:] Copy. 23. In U. S. Supreme Court. Lehigh Valley Railroad Co. (plaintiff in error) *vs.* Commonwealth of Pennsylvania (defendant in error). Petition for writ of error.

41 (*Writ of Error Bond.*)

Supreme Court of the United States.

LEHIGH VALLEY RAILROAD COMPANY, Plaintiff in Error, *vs.* COMMONWEALTH OF PENNSYLVANIA, Defendant in Error.	In Error to the Supreme Court of Pennsylvania, Middle District. No. 23. May Term, 1889.

Know all men by *te* these presents that we, The Lehigh Valley Railroad Company and Charles Hartshorne and John B. Garrett, of the city of Philadelphia and State of Pennsylvania, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of twenty-five hundred dollrars ($2,500), lawful money of the United States of America, to be paid to the said Commonwealth of Pennsylvania or her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves and each of us, our heirs, executors, and successors, firmly by these presents.

Sealed with our seals and dated the 15th day of July, A. D. 1889.

Whereas lately, in the court of common pleas in and for the county of Dauphin, judgment was entered against The Lehigh Valley Railroad Company at the suit of the Commonwealth of Pennsylvania, of June term, 1887, No. 524, which judgment was afterwards affirmed by the State of Pennsylvania in a certain plea and suit in said court, of May term, 1889, No. 23, in the middle district of said court, and the said Lehigh Valley Railroad Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of Pennsylvania:

42 Now, the condition of this obligation is such that if the above-named Lehigh Valley Railroad Company, plaintiff in error, shall prosecute its writ of error with effect and answer all damages and costs and if it shall fail to make good its plea, then this obligation is to be void; otherwise to remain in full force and virtue.

LEHIGH VALLEY RAILROAD COMPANY,
By CHARLES HARTSHORNE, *Vice-President.*

[Seal of Lehigh Valley Railroad Company.]

Attest: JOHN R. FANSHAW, *Secretary.*
CHARLES HARTSHORNE. [SEAL.]
JOHN B. GARRETT. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. BEIDLER.
ELLIS G. BROWN.

This bond is approved for supersedeas August 23d, 1889, by—
JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of the United States.

43 STATE OF PENNSYLVANIA, } ss:
City of Harrisburg, }

In testimony that the foregoing, contained on pages one to forty-three, inclusive, is a full, true, and correct copy of the record and proceedings of the supreme court of Pennsylvania, the highest court of law and equity in the State of Pennsylvania, in the case lately depending therein to No. 23, of May term, 1889, wherein The Lehigh Valley Railroad Company was plaintiff in error and the said Commonwealth of Pennsylvania was defendant in error, I have hereunto subscribed my name and affixed the seal of the said supreme court, at Harrisburg, this 18th day of September, A. D. 1889.

{ Seal of the Supreme Court of Pennsylvania, Middle District, 1776. }

WILLIAM PEARSON,
Prothonotary of the Middle District of the Supreme Court of Pennsylvania.

44 In the Supreme Court of the United States. No. 1243. October Term, 1889.

LEHIGH VALLEY RAILROAD COMPANY }
vs.
COMMONWEALTH OF PENNSYLVANIA. }

Surwrit of error by Lehigh Valley Railroad Company to the supreme court of Pennsylvania.

Assignments of Error.

1. The learned court erred in not sustaining the company's first exception to the decision of the court of common pleas of Dauphin county, viz:

"The court erred in including in the judgment directed to be entered in favor of the Commonwealth a tax upon the item of $122,833.05, being the receipts of the Lehigh Valley Railroad Company for transportation of freight and passengers from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, said freight and passengers having been carried by the Pennsylvania Railroad Company from Phillipsburgh through the State of New Jersey, by way of Trenton, to Philadelphia, as stated in finding of fact No. 2, the taxation of receipts so derived being in violation of that clause of the Constitution of the United States which declares that Congress

shall have power 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

2. The learned court erred in not sustaining the company's second exception to the decision of the court of common pleas of Dauphin county, viz:

"The court erred in deciding, relative to the item of $122,833.05, receipts of the Lehigh Valley Railroad Company for the transportation from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, of freight and passengers carried by the Pennsylvania Railroad Company from Phillipsburgh through the State of New Jersey, by way of Trenton, to Philadelphia, that 'in principle the case before us does not seem to be within the mischief which the commercial clause of the Federal Constitution was intended to prevent. In reality and substance the commerce here is purely internal, whatever the mere form of it may be.'"

45 3. The learned court erred in not sustaining the company's third exception to the decision of the court of common pleas of Dauphin county, viz:

"Having found as a fact that concerning the item of $122,833.05, 'so far as the defendant is concerned, the transportation was from Mauch Chunk, Pennsylvania, to Phillipsburgh, New Jersey, and the receipts named were for that particular transportation; but the freight and passengers were there delivered upon the railroad of another company, to wit, the Belvidere, Delaware, Railroad Co., a line operated by the Pennsylvania Railroad Company, upon which railroad it was carried to Trenton and thence by other lines of the Pennsylvania Railroad Company's system to Philadelphia. By running arrangements between these companies the transportation was continuous, and the freight and passengers were, when their transportation commenced at Mauch Chunk, destined for Philadelphia, and were actually there delivered. The transportation of passengers was upon tickets, a form of which is hereby referred to, hereto annexed, and marked Exhibit A. The transportation of freight was upon the joint way-bill of the Lehigh Valley and Pennsylvania Railroad Companies, and this way-bill covered the whole transportation. A form is annexed, referred to, and marked Exhibit B. The total receipts from this transportation, seven per cent. of which were collected by the Lehigh Valley Railroad Company at point of shipment and the remainder by the Pennsylvania Railroad Company at point of destination, were apportioned between the companies upon a mileage basis—that is to say, each company's share was in the proportion that the number of miles carried by it bore to the number of miles carried. One twentieth of the said receipts were derived from passenger transportation,' the court erred in not deciding that the transportation by the Lehigh Valley Railroad Company, from which the said receipts were derived, was interstate transportation, and that the taxation of the receipts for such transportation was in violation of that clause of the Constitution of the United States which declares that Congress shall have power 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"